
(1990) 03 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 1002 of 1980

State of Maharashtra

APPELLANT

Vs

Mohd. Ismail Ahmed Doda

RESPONDENT

Date of Decision : 06-03-1990

Acts Referred:

Customs Act, 1962 — Section 135, 135(1)

Citation : (1990) 50 ELT 346

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Advocate : Shri B R. Patel, app, for the Appellant;

Judgement

1. The State has come in appeal against the order of acquittal of Original Accused Nos. 6, 11, 12, 13, 16, 17 and 18 for the offence punishable u/s 120-B of the Indian Penal Code r/w Section 135 of the Customs Act and Section 5 of the Imports and Exports (Control) Act, 1947 in Criminal Case No. 76/CW/79 on the file of the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Bombay. However, the appeal against Accused Nos. 6, 11, 12, 13, 17, and 18 was dismissed summarily and only leave was granted to appeal against the order of acquittal of Accused No. 16 who is the present Respondent No. 5 and the same was admitted.

2. Briefly stated facts giving rise to the present appeal are as under :-

Original Accused Nos. 3, 5, 6, 10, 11, 12, 13, 16, 17, 18, 19, 22, 23 and 25 along with other known and unknown persons were alleged to be parties to the criminal conspiracy at Bombay, Dubai and other places and the object of the said conspiracy was to smuggle textiles and other articles of foreign origin into India and to evade duty chargeable on the said goods and to contravene the prohibition imposed on import of such goods into India. The prosecution case is that on the night between 2nd and 3rd September 1971 large consignment of gunny covered packages of smuggled goods was brought to India by Accused

Nos. 1 to 14 and the same landed at Versova Beach. The said contraband articles are alleged to have been brought through an Arab boat into Indian waters and from there they were brought to Indian coast by Accused No. 4 and was landed at Versova Beach under the supervision of Accused No. 3. But all the goods could not be landed at Versova Beach as before that could be done, there was day break and, therefore, the goods that could be brought to Versova Beach were concealed in a nearby muslim cemetery of which Accused No. 10 was in charge. It is the prosecution case further that about 60 packages were then loaded in a truck bearing registration No. MHT 1700 owned by Accused No. 11 and they were brought to a godown situated at 142-J Bhuleshwar Road, Opposite Lalbaba Mandir, Bombay-2 which at the relevant time was let out to Accused Nos. 17 and 18 and the said goods were stored in the said godown; that the officers of the Central Excise and Marine Preventive Division had already kept a watch on the said godown and Accused No. 19 was noticed approaching the said godown along with hand-cartman named Rama Lakhan and when Accused No. 19 was about to open the lock of the said godown, he and the other person with him were intercepted; that on inquiry it was revealed that Accused No. 19 had come to the godown to remove the packages; that thereafter the godown was opened by the officers of the Central Excise and Marine Preventive Division and it was found to contain large number of gunny covered heavy packages; that the said packages thereafter were removed in the presence of panchas and Accused No. 19 to Customs godown; that on examination of the said goods it was found that there were about 60 packages having foreign textiles, record players, playing cards, nylon etc. of foreign origin and the total import value of the same was Rs. 2,43,642/- and the market value of the same in India was Rs. 7,30,927/-; that the said goods were seized under panchanama by the officers;" that on the same day at about 4.30 p.m. Police Constable Satam attached to V.P. Road Police Station intercepted truck bearing No. MHT 1700 which was being driven by Accused No. 5 opposite Chouskara Chawl, Kalbadevi, Bombay; that Accused No. 12 was the cleaner of the said truck; that the said truck there was brought to V.P. Road Police Station and the Central Excise Marine (P) Division Officers were informed about the said interception; that after the arrival of the said officers of Central Excise the truck was searched and foreign textile of the import value of Rs. 1,35,893/- having market value of Rs. 4,07,680/- were found in the same; that the said truck along with the goods was seized under panchanama; that the said truck before its interception by Police Constable Satam is alleged to have piloted and escorted by Accused Nos. 6 and 13 in a separate taxi, and after the said truck approached the godown Accused Nos. 16 who was present at the godown informed the people in the taxi and the truck that there had been a raid of Customs on the said godown and, therefore, the said taxi and the truck along with Accused No. 16 moved away; that the said truck was being driven by accused No. 5 when it was intercepted; that while the godown was raided the conspirators managed to remove the remaining goods from the cemetery in a truck belonging to Maharashtra Punjab Road Ways owned by Accused No. 23 at the relevant time and that the said truck was hired out to Accused No. 1 by

Accused No. 25 who was Assistant Manager of the said Maharashtra Punjab Road Ways without the services of the driver; that the said truck was also searched when it was found parked and on the truck 10 packages containing foreign textiles of the import value of Rs. 1,25,565/- were found and the same were seized under panchanama. In view of the said allegations, all the Accused were charged u/s 120-B of the Indian Penal Code r/w Section 135 of the Customs Act and Section 5 of the Imports and Exports (Control) Act, 1947 and Accused Nos. 3, 5, 6, 10, 11, 12, 13, 16, 17, 18, 19 were further charged u/s 135(1)(a) r/w 135(1)(i) of the Customs Act in respect of goods seized under the panchanama and they were also charged u/s 5 of the Imports and Exports (Control) Act, 1947 for having contravened Section 3 of the Imports and Exports (Control) Act, 1955. Several other charges were also framed. On the strength of evidence led by the prosecution, the learned Additional Chief Metropolitan Magistrate convicted Accused Nos. 5 and 19 of the offence punishable u/s 135(1)(a) r/w 135(1)(i) of the Customs Act and sentenced them. The learned Additional Chief Metropolitan Magistrate, however, acquitted Accused Nos. 3, 6, 10, 11, 12, 13, 16, 17, 18, 22, 23, and 25 of the offences with which they were charged. Being aggrieved by the said order of acquittal, the State came in appeal to this Court. But appeal against Accused No. 16 only was admitted and, therefore, at present I am only concerned with the appeal against the acquittal of Accused No. 16.

3. On behalf of the State, it is contended that the Trial Court erred in acquitting Accused No. 16 who was admittedly employer of Accused No. 19 who was found guilty by the Trial Court and also the records clearly establish that Accused No. 19 had gone to the godown with the keys at the instance of Accused No. 16 and that it was Accused No. 16 who directed the truck to go away from the godown as the said godown at Bhuleshwar Road was raided. Reliance is placed on some evidence which according to the prosecution shows that Accused No. 16 had boarded the taxi which had piloted the truck and moved away from the godown at Bhuleshwar Road. Reliance is also placed on leave and licence agreement which is signed by Accused No. 16 as a witness to contend that the godown from where the smuggled goods were found was rented out to Accused No. 17 and 18 at the instance of Accused No. 16.

4. The Trial Court has considered the evidence led by the prosecution in respect of Accused No. 16 in para 22 of the judgment. The allegation against Accused No. 16 was that after the raid and seizure of smuggled goods from the godown at Bhuleshwar Road, Accused NO. 16 had directed and piloted the taxi and the truck with a view to see that they did not approach the godown, but the learned Additional Chief Metropolitan Magistrate did not find the evidence in this respect cogent and consistent. Nothing could be pointed out to show that the learned Additional Chief Metropolitan Magistrate was in error to conclude accordingly. Except the evidence of Fakir Mohamed there was no evidence to show that it was Accused No. 16 who had occupied the taxi and the Trial Court did not place any reliance on the evidence of Fakir Mohamed. As far as the leave and licence agreement in favour of Accused Nos. 17 and 18 is concerned, it is the

prosecution case that the said licence deed is also signed by Accused No. 16 as a witness and it is the Accused No. 16 who had procured the said godown for Accused Nos. 17 and 18. Now merely because Accused No. 16 had signed on the said licence deed as a witness, it cannot be said that it was the Accused No. 16 who had procured the said godown for Accused Nos. 17 and 18 and even if it is found that he had procured the godown for Accused Nos. 17 and 18 the prosecution must further show that it was procured for storing smuggled articles and he had knowledge of the same. In the absence of any such evidence the view taken by the Trial Court that there is no sufficient evidence to link Accused No. 16 with the godown at Bhuleshwar Road cannot be said to be erroneous. Even in the search of the house of Accused No. 16 no tangible evidence was found on the basis of which it could be said that the Accused No. 16 was concerned with the goods stored in the godown at Bhuleshwar Road. Prosecution also placed reliance on the confessional statement made by Accused No. 19 before the Customs Officers. It appears that Accused No. 19 in an inculpatory statement made before the Customs Officers had stated that he had taken bedsheets from the shop of Accused No. 16 with a view to cover the bundles in the godown at Bhuleshwar Road and that he had done so as the said idea was given to him by Accused No. 16. The said confessional statement is retracted by Accused No. 19. An uncorroborated retracted confessional statement cannot be made the basis of conviction even in respect of the Accused who had given such confessional statement and, therefore, it can hardly be relied upon to hold other Accused named in such a confessional statement guilty of the offence. Under these circumstances, the view taken by the learned Additional Chief Metropolitan Magistrate cannot be said to be erroneous so as to call for an interference in the appeal filed by the State. At any rate, the view taken by the learned Additional Chief Metropolitan Magistrate must be held to be a plausible view and, therefore, no interference with the same is called for in this appeal.

5. In the result, the appeal fails and, therefore, the same is dismissed.